SECURITIES COMMISSION MALAYSIA v. TOH KAI FATT

HIGH COURT MALAYA, KUALA LUMPUR
ONG CHEE KWAN JC
[SUIT NO: WA-22NCC-416-09-2021]
17 APRIL 2023

Abstract – *In a claim for insider trading pursuant to s. 201(5)(a) of the Capital Markets and Services Act 2007, whether an individual has possession of inside information could be established from circumstantial evidence. This may include a myriad of factors such as the informant's access to the inside information, the individual's access to the informant, the relationship between the individual and the informant, the timing of the contact between them, the timing of the trades done by the individual and the pattern of trades by the individual, to name a few.*

SECURITIES: *Shares – Trading – Insider trading – Claim – Company's advisor in possession of inside information relating to possibility of acquisition – Inside information allegedly communicated to another individual – Individual acquired and disposed of shares – Access to inside information – Whether circumstantial evidence showed that individual had possession of inside information – Relationship between individual and informant – Timing of contact between individual and informant – Pattern of trades – Whether insider trading established – Capital Markets and Services Act 2007, ss. 188(1), 188(2), 183 & 201(5)(a)*

This was a civil claim against the defendant for insider trading, pursuant to s. 201(5)(a) of the Capital Markets and Services Act 2007 ('CMSA'). HPI Resources Bhd ('HPI') was a public-listed company on the main market of Bursa Malaysia from 1997 until 2011. The management and ownership of HPI was primarily in the hands of four brothers ('Chan brothers') and Lucrabase Sdn Bhd ('Lucrabase') was a significant shareholder with a 40.69% stake in HPI, which was mainly controlled by the Chan brothers. Oji Paper Co Ltd ('OPC') was a Japanese corporation that had established a subsidiary in Malaysia, Oji Paper Asia Sdn Bhd ('OPA') in September 2010. In October 2010, OPC was introduced to HPI's leadership through a meeting. At the end of January 2011, OPA arranged for meetings and requested for quotations and proposals from several investment banks to, among others, engage their services as advisors for the proposed acquisition of HPI. William Tan ('PW2') was requested to act as an advisor to HPI regarding the proposed acquisition. PW2 was made aware that the Chan brothers wanted to sell their interest in HPI and was requested to attend a meeting to advise on the general offer process and the next steps once the offer price was agreed upon. A meeting was held on 11 March 2011 in Tokyo, between the representatives of HPI and OPC and PW2 was one of the main persons negotiating the offer price with OPC ('Tokyo meeting'). At

A the Tokyo meeting, OPC and HPI agreed on an offer price of RM4.40 per HPI share. Right after PW2's return to Malaysia, PW2 had various communications with the defendant, the managing director of one Ban Seng Plastic Industries & Assembly Sdn Bhd ('BSPIA'). The defendant had a long-standing relationship with PW2 who had provided audit and tax services to B the defendant's company since 2006 to date. One day after his initial communication with PW2, *ie* 15 March 2011, the defendant applied for a trading account ('CDS account'). Immediately after, the defendant acquired a total of 524,000 units of shares in HPI ('HPI shares') in the span of two days *ie*, 16 March 2011 and 17 March 2011. The defendant subsequently C disposed of all of the 524,000 shares he acquired on three dates in April 2011 for a profit. Meanwhile, OPA appointed RHB Investment Bank ('RHB') as their primary advisor for the takeover of HPI. On 14 June 2011, OPC's Board gave approval to OPA to proceed with the said takeover ('OPA's director's resolutions'). The next day, *ie,* 15 June 2011, HPI was served with a notice by RHB acting on behalf of the OPA of a conditional takeover offer D for all voting shares in HPI at the offer price of RM4.40 per share, which was announced on Bursa Malaysia's website ('announcement'). Two days before the announcement, *ie*, 13 June 2011, the defendant acquired 450,000 HPI shares at RM3.75 per share. However, one or two days after the announcement, *ie*, 16 June 2011 and 17 June 2011, the defendant disposed E all his HPI shares. In August 2011, RHB announced on Bursa Malaysia's website that the conditions for the offer had been fulfilled and the takeover had become unconditional. HPI was delisted from the official list of Bursa Malaysia on 9 September 2011. The plaintiff's case against the defendant was that (i) by virtue of PW2's role as HPI's advisor and his attendance at the F Tokyo meeting, PW2 was in possession of information relating to the possibility of an acquisition of HPI by OPC and/or the proposed acquisition of HPI by OPC and/or the imminent acquisition of HPI by OPC which fell within the meaning of s. 183 of the CMSA ('inside information'); (ii) PW2 communicated the inside information through various telephone calls and G exchange of text messages; (iii) the defendant knew or ought to have known that the inside information was not generally available; and (iv) by acquiring the HPI shares whilst in possession of the inside information, the defendant was an 'insider' within the meaning of s. 188(1) of the CMSA. The plaintiff claimed against the defendant for, *inter alia*, (i) a declaration that the defendant had breached s. 188(2)(a) of the CMSA; (ii) a sum H of RM2,363,122.50; (iii) a civil penalty of RM1 million or any other amount (not exceeding RM1 million) deemed appropriate by the court; (iv) an order that the defendant be barred from being a chief executive or director and from being involved in the management, directly or indirectly, of any other public-listed company in Malaysia for a period of five years from the date I of the judgment; and (v) an order that the defendant be restrained from trading in any securities on Bursa Malaysia for a period of five years from the date of the judgment.

Held (granting reliefs sought by plaintiff):

(1) The defendant's acquisition of the HPI shares on 16 March 2011 and 17 March 2011, occurred right after the Tokyo meeting, where the offer price of RM4.40 per HPI share was agreed upon. Similarly, the defendant's acquisition of the HPI shares on 13 June 2011, took place two days prior to the Bursa announcement. The defendant's opening of a new CDS account, the acquisition of the HPI shares and the disposal of HPI shares coincided with the defendant's communications with PW2, particularly during a period of a surge in the number of communications between the defendant and PW2. The value of the defendant's acquisition of the HPI shares (a single counter in his initial investment) was RM994,521.47 on 16 March 2011, RM605,023.36 on 17 March 2011 and RM1,695,504.10 on 13 June 2011. On 16 March 2011, his acquisition volume of 12.88% of the total market volume (2,600,480 shares traded) made him the top trader on Bursa Malaysia for that day. The defendant had profited from his acquisition of the HPI shares. The timing of the communications between PW2 and the defendant and the timing of the defendant's trades in the HPI shares could not be put down to mere coincidences. (paras 62 & 63)

(2) The defendant's trading history and trading pattern were also supportive of the plaintiff's case. Prior to opening the CDS account, the defendant had not traded on Bursa Malaysia at all. Of note was the fact that from the date of opening his CDS account on 15 March 2011 to the date of the announcement on 15 June 2011, the defendant had solely acquired the HPI shares. The defendant's opening of the CDS account on 15 March 2011 and his acquisition of the HPI shares on 16 March 2011 and 17 March 2011 could also only be described as frantic. Further, the defendant's opening of the CDS account on 15 March 2011 was one day after his initial communication with PW2, and four days after the Tokyo meeting. The same was a cash upfront account. After that, the very next day, the defendant's first purchase on 16 March 2011 of RM994,521.47 was very close to the defendant's initial approved trading limit of RM1 million. The next day, he spent RM602,023.36 for his second purchase of the HPI shares on 17 March 2011. The defendant could not provide a satisfactory account as to the reason why he had specifically acquired shares in the corrugated cardboard or paper industry and even then, opted for HPI shares instead of other companies in a similar industry. Based on the evidence, it appeared that the defendant had given instructions to his broker to acquire as many HPI shares as possible with the cash he had deposited for trading, which was close to his trading limit of RM1 million, before topping up the next day on 17 March 2011. For a first-time investor into the share market, the defendant appeared too surefooted in his purchase of the HPI shares as reflected in his 'sweeping' up of the HPI shares to the limit of his trading account on 16 March 2011. (paras 64-67, 69, 71 & 72)

(3) PW2 and the defendant have had a business relationship since 2006, as PW2's firm provided audit and tax services to the defendant's companies. Therefore, PW2 and the defendant had known each other for at least five years at the time of the defendant's acquisition of the HPI shares. PW2 had been and continued to be the auditor and tax agent of at least four companies owned by the defendant. PW2 also had a long relationship with the defendant, having provided audit and tax services to the defendant for 16 years at the time of his testimony. PW2 had a vested interest to keep that relationship intact. Based on, *inter alia*, the timing of the communications between the defendant and PW2 and the proximity of the defendant's purchases of the HPI shares to the said communications, as well as the defendant's trading pattern and volume, PW2 did communicate the inside information to the defendant. The overwhelming body of contemporaneous, documentary and circumstantial evidence led to the irresistible conclusion that the defendant was in possession of the inside information at the time of his acquisition of the HPI shares and that he would have received this from PW2. (paras 78-80 & 95-97)

(4) The defendant had contravened s. 188(2)(a) of the CMSA, in that: (i) he possessed the inside information which was not generally available and which, on becoming generally available, a reasonable person would expect it to have a material effect on the price or value of the HPI shares; (ii) he knew or ought reasonably to have known that the inside information was not generally available; and (iii) prior to the inside information becoming generally available on 15 June 2011, the defendant, while in possession of the inside information, had acquired the HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011. The defendant was therefore an 'insider' within the meaning of s. 188(1) of the CMSA at the time of the acquisition of the HPI shares, and the defendant had contravened s. 188(2)(a) of the CMSA. (paras 216 & 217)

(5) The following reliefs were granted, *inter alia*: (i) a declaration that the defendant had breached s. 188(2)(a) of the CMSA; (ii) the defendant to pay a sum of RM2,363,122.50 to the plaintiff; (iii) the defendant to pay a civil penalty of RM250,000 to the plaintiff; (iv) an order that the defendant be barred from being a chief executive or director and from being involved in the management, directly or indirectly, of any other public-listed company in Malaysia for a period of five years from the date of judgment, pursuant to s. 360(1)(a)(L) of the CMSA; and (v) an order that the defendant be restrained from trading in any securities on Bursa Malaysia for a period of five years from the date of judgment, pursuant to s. 360(1)(a)(B) of the CMSA. (para 241)

Case(s) referred to:

A Sharhan Sdn Bhd & Anor v. Edipro Construction & Engineering [2020] 1 LNS 1046 HC ***(refd)***

Abdul Ghafur Mohd Ibrahim v. Pengarah Hospital Kepala Batas & Anor [2010] 1 LNS 645 HC ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Lew Chee Fai Kevin v. Monetary Authority of Singapore [2012] 2 SLR 913 ***(refd)***

Lim Guan Eng v. PP & Other Appeals [1998] 3 CLJ 769 CA ***(refd)***

PP v. Chua Seng Huat [1999] 6 CLJ 590 HC ***(refd)***

Suruhanjaya Sekuriti Malaysia v. Chan Soon Huat [2017] 1 LNS 2175 HC ***(refd)***

Suruhanjaya Sekuriti Malaysia v. Lim Kok Boon & Anor [2019] 1 LNS 1269 HC ***(refd)***

Suruhanjaya Sekuriti Malaysia v. Ng Back Heang (WA-22NCC-162-04-2020) (Unreported) ***(refd)***

Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby [2021] 7 CLJ 913 HC ***(refd)***

Suruhanjaya Sekuriti Malaysia v. Yap Wee Hin [2022] 1 LNS 1879 HC ***(refd)***

United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***

Legislation referred to:

Capital Markets and Services Act 2007, ss. 2, 183, 184, 185, 188(1), (2)(a), 201(5)(a), (b), (7), 360(1)(a)(B), 360(1)(a)(L)

For the plaintiff - Shanti Mogan & Yiew De Quan; M/s Shearn Delamore & Co
Mohd Aerie Rahman, Quek Yiing Huey & Caysseny Tean Boonsiri; From Securities Commission Malaysia

For the defendant - K C Wan, Alex Chang, Danis Wan Kah Whei & Lim Wen Mi; M/s K C Wan & Co

Reported by Lina E

JUDGMENT

Ong Chee Kwan JC:

Introduction

[1] This is a civil claim filed by the plaintiff for insider trading pursuant to s. 201(5)(a) of the Capital Markets and Services Act 2007 ("CMSA").

[2] The plaintiff's claim against the defendant for:

(i) a declaration that the defendant had breached s. 188(2)(a) of the CMSA;

(ii) the sum of RM2,363,122.50;

(iii) a civil penalty of RM1,000,000 or any other amount (not exceeding RM1,000,000) that this court deems appropriate to the plaintiff;

(iv) interest at the rate of 5% per annum on the judgment sums in (ii) and (iii) above from the date of judgment until full and final realisation thereof;

A (v) an order that the defendant be barred from being a chief executive or director and from being involved in the management, directly or indirectly, of any other public listed company in Malaysia for a period of five years from the date of judgment or for such period as may be determined by this court pursuant to s. 360(1)(a)(L) of the CMSA 2007;

B (vi) an order that the defendant be restrained from trading in any securities on Bursa Malaysia for a period of five years from the date of judgment or for such period as may be determined by this court pursuant to s. 360(1)(a)(B) of the CMSA 2007;

C (vii) costs on a solicitor-client basis or costs.

[3] The defendant's main contentions are that the plaintiff has not discharged its burden of proving that material non-public information was in fact communicated to him and that in any event, such information was not 'material' as defined in s. 185 of the CMSA. More specifically, the defendant D contended that the increase in the share price immediately on the information becoming generally available was too low and or insignificant which the defendant said constitutes conclusive proof that the information is not 'material'.

Background Facts

E *HPI Resources Berhad*

[4] HPI Resources Berhad ("HPI") was a public listed company on the Main Market of Bursa Malaysia from 1997 until 9 September 2011. HPI was the investment holding company and part of the HPI group of companies F ("HPI Group"). The HPI Group was involved in the manufacturing and marketing of packaging products such as corrugated boards and carton boxes.

[5] The management and ownership of HPI was primarily in the hands of Albert Chan, Chan Choo Sing, Chan Chow Tek, and Chan Chor Ang ("the Chan Brothers"). Lucrabase Sdn Bhd ("Lucrabase"), was a significant G shareholder with a 40.69% stake in HPI, which was mainly controlled and owned by the Chan Brothers.

The Acquisition Of HPI

[6] Oji Paper Co Ltd ("OPC") was a Japanese corporation which was desirous of expanding its business overseas during January 2010 to June H 2011, especially in Southeast Asia. To that effect, OPC established a subsidiary in Malaysia, Oji Paper Asia Sdn Bhd ("OPA") in September 2010.

[7] In October 2010, OPC was introduced to HPI's leadership through a meeting that took place on 27 October 2010 at Restoran Loon Sing in Nilai.

I

[8] Subsequently, OPC and Lucrabase signed a confidentiality agreement on 12 November 2010 ("confidentiality agreement") aimed at allowing OPC to evaluate and negotiate the potential acquisition of Lucrabase's shares in HPI.

[9] From 8 December 2010 to 10 December 2010, representatives from OPC and OPA visited HPI's factories in Malaysia as part of the due diligence process.

[10] On 9 December 2010, a dinner gathering was held between OPC, OPA, and HPI's leadership in Batu Pahat. During this meeting, the Chan Brothers informed the OPC and OPA representatives in attendance that they were serious about selling HPI.

[11] On 19 January 2011, a factory visit was held at HPI's factory in Cambodia. Subsequently, on the same day, a meeting took place at HPI Cambodia's office to discuss how the acquisition can proceed to the next phase.

[12] At the end of January 2011, OPA arranged for meetings and requested for quotations and proposals from several investment banks to, among others, engage their services as advisors for the proposed acquisition of HPI.

[13] In February 2011, Albert Chan requested Tan Chuan Hock (also known as William Tan) ("PW2") to act as an advisor to HPI regarding the proposed acquisition. PW2 was made aware that the Chan Brothers intended to sell their interest in HPI and was requested to attend a meeting in Tokyo on 11 March 2011 to advise on the general offer process and the next steps once the offer price was agreed.

[14] On 11 March 2011, a meeting was held between HPI representatives and OPC representatives in OPC's Tokyo office ("Tokyo meeting"). PW2 was one of the main persons negotiating the offer price with OPC.

[15] At the Tokyo meeting, OPC and HPI agreed on an offer price of RM4.40 per HPI share. The agreement on the offer price was reflected in an email dated 14 March 2011 from Mikito Terauchi ("PW3") to Albert Chan.

[16] On 15 March 2011, OPA appointed RHB Investment Bank ("RHB") as their primary advisor for the takeover of HPI.

[17] On 14 June 2011, OPC's board gave approval to OPA to proceed with the takeover of HPI at the price of RM4.40 per share ("OPA's director resolutions dated 14 June 2011").

[18] On 15 June 2011, HPI was served with a notice by RHB (acting on behalf of OPA) of a conditional takeover offer for all voting shares in HPI at the offer price of RM4.40 per share, which was announced on Bursa Malaysia's website ("announcement").

[19] On 11 August 2011, RHB announced on Bursa Malaysia's website that the conditions for the offer had been fulfilled and the takeover had become unconditional. HPI was delisted from the official list of Bursa Malaysia, effective from 9am on 9 September 2011.

The Defendant And His Acquisition Of HPI Shares

[20] The defendant is the managing director of one Ban Seng Plastic Industries & Assembly Sdn Bhd ("BSPIA").

[21] The defendant has a long-standing relationship with PW2, who has provided audit and tax services to the defendant's company since 2006 to date. As set out above, PW2 was one of the attendees of the Tokyo meeting on 11 March 2011 and was privy to discussions and negotiations at the Tokyo meeting.

[22] PW2 returned from Tokyo on 13 March 2011.

[23] Right after PW2's return to Malaysia from Tokyo, from 14 March 2011 to 16 March 2011, the defendant and PW2 communicated as follows:

Date	Time	Duration	Communication	Reference
14.3.2011	11:41am	56 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1279
	9:35pm	33 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
15.3.2011	8:18am	15 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	9:45am	57 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	4:36pm	37 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
15.3.2011	6:23pm	22 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	9:53pm	49 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1042

16.3.2011	9:13am		SMS	Maxis Statement of Account for Toh Kai Fatt, B4, p 1282
	9:15am	19 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1043
	5:35pm		SMS	Maxis Statement of Account for Toh Kai Fatt, B4, p 1282
	6:39pm	37 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1043
	6:40pm	-	SMS	Maxis Statement of Account for William CH Tan & Associates, B4, p 1046
	6:48pm	32 seconds	Phone Call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280

[24] On 15 March 2011, one day after his initial communication with PW2, the defendant submitted his application for a trading account with Central Depository System Account No. 078-004-052118940 ("CDS account") *via* AA Anthony Securities Sdn Bhd. The defendant's CDS account had an initial approved trading limit of RM1,000,000. This was the defendant's first share trading account.

[25] Immediately after, the defendant acquired a total of 524,000 units of shares in HPI ("HPI shares") at a cost of RM1,599,544.83, in the span of two days – 16 March 2011 and 17 March 2011. The following is a breakdown:

(i) on 16 March 2011, one day after opening the CDS account, the defendant acquired 335,000 HPI shares at RM2.95 per share, at the cost of acquisition of RM994,521.47 ("contract note dated 16 March 2011"). This made up 12.88% of the total market volume (2,600,480 shares traded) on 16 March 2011;

(ii) on 17 March 2011, the defendant acquired 189,000 HPI shares at RM3.18 per share at the cost of acquisition of RM605,023.36 ("contract note dated 17 March 2011").

[26] The defendant had not traded on Bursa Malaysia prior to these two large purchases.

[27] On 21 April 2011, 22 April 2011 and 27 April 2011, the defendant subsequently disposed all of the 524,000 HPI shares he acquired for a profit, as follows ("contract notes dated 21 April 2011, 22 April 2011, 27 April 2011").

Date of Transaction	Shares disposed (units)	Price Per Share
21.4.2011	185,200	RM3.74
22.4.2011	308,800	RM3.65
27.4.2011	30,000	RM3.18

[28] From 9 June 2011 to 12 June 2011, there were further communications between the defendant and PW2 as follows:

Date	Time	Duration	Communication	Reference
9.6.2011	1:06pm	1 minute 9 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
10.6.2011	5:08pm	2 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096
	5:36pm	39 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
12.6.2011	10:30am	3 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096
	10:58am	43 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
	11:44am	25 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
	12:42pm	10 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096

[29] On 13 June 2011, the defendant acquired 450,000 HPI shares at RM3.75 per share at the cost of acquisition of RM1,695,504.10 ("contract note dated 13 June 2011"). This was merely two days before the announcement on 15 June 2011 ("Bursa announcement dated 15 June 2011").

[30] On 16 June 2011 and 17 June 2011, one and two days after the announcement dated 15 June 2011, respectively, the defendant disposed all of his HPI shares, being the 450,000 HPI shares he acquired for a profit, as follows ("contract notes dated 16 June 2011 and 17 June 2011"):

Date of Transaction	Shares disposed (units)	Price Per Share
16.6.2011	150,000	RM4.18
17.6.2011	300,000	RM4.20

[31] A chronology of the material events is as follows:

Date	Event
11.3.2011	PW2 attended the Tokyo Meeting
13.3.2011	PW2 returned to Malaysia
14.3.2011	The defendant called PW2 twice
15.3.2011	The defendant exchanged 5 phone calls with PW2 The defendant opened his CDS account
16.3.2011	The defendant exchanged 3 SMSes and 3 phone calls with PW2 The defendant purchased 335,000 HPI Shares
17.3.2011	The defendant purchased 189,000 HPI Shares
21.3.2011	The defendant sent an SMS to PW2
9.6.2011	The defendant called PW2
10.6.2011	The defendant exchanged 2 phone calls with PW2
12.6.2011	The defendant exchanged 4 phone calls with PW2
13.6.2011	The defendant purchased 450,000 HPI Shares
15.6.2011	Announcement
16.6.2011	The defendant disposed 150,000 HPI Shares
17.6.2011	The defendant disposed 300,000 HPI Shares

Plaintiff's Case

[32] The plaintiff's case is this.

[33] By virtue of PW2's role as HPI's advisor and his attendance at the Tokyo meeting on 11 March 2011, PW2 was in possession of information relating to the possibility of an acquisition of HPI by OPC and/or the proposed acquisition of HPI by OPC and/or the imminent acquisition of HPI by OPC which falls within the meaning of s. 183 of the CMSA ("inside information").

[34] The inside information is information that:

(i) was not generally available within the meaning of s. 184 of the CMSA, until the announcement on 15 June 2011; and

(ii) on becoming generally available would or would tend to have material effect on the price and value of shares in HPI, in that it would tend to influence reasonable persons who invest in HPI shares in deciding whether or not to acquire or dispose of such securities within the meaning of s. 185 of the CMSA.

[35] During the telephone calls and exchange of text messages referenced above, PW2 communicated inside information to the defendant.

[36] The defendant knew or ought to have known that the inside information was not generally available.

[37] Therefore, by acquiring HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011 whilst in possession of inside information, the defendant was an "insider" within the meaning of s. 188(1) of the CMSA. By doing so, the defendant is in breach of s. 188(2)(a) of the CMSA.

The Defendant's Case

[38] The defendant claimed that there was no communication as defined in s. 188 of the CMSA of inside information by PW2 to the defendant. In particular, the defendant claimed that he had no knowledge of PW2's visit to Japan and that there is no evidence PW2 knew that consent from OPC and or OPA would be given for the acquisition in June 2011.

[39] The defendant further contended that he was never in possession of any inside information when he acquired the HPI shares and in any case, the defendant contended that such information, if at all, was not 'material'.

[40] It is the defendant's case that he had invested in HPI shares because he was interested in the business relating to the manufacture of corrugated carton boxes. He had read the quarterly results of HPI and had monitored the news on the expansion plans by OPC of its business in Southeast Asia.

The Law

[41] Based on the High Court case of *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827, the plaintiff has to establish the following:

(i) the defendant was in possession of information;

(ii) the information was not generally available;

(iii) the defendant knew or ought reasonably to have known that the information was not generally available;

(iv) if the information was generally available, a reasonable person would expect it to have a material effect on the price of securities;

(v) the defendant traded in the securities to which the information relates whilst in possession of the information; and

(vi) the securities in question came within the definition of "securities" applicable at the material time.

[42] The following principles also apply:

(i) the standard of proof is on the balance of probabilities. See *Suruhanjaya Sekuriti Malaysia v. Chan Soon Huat* [2017] 1 LNS 2175; [2018] 9 MLJ 782 at paras. 31 to 33;

(ii) circumstantial evidence of insider trading suffices; there is no need for direct evidence. See *Suruhanjaya Sekuriti Malaysia v. Chan Soon Huat* [2017] 1 LNS 2175; [2018] 9 MLJ 782 at para. 37; *Suruhanjaya Sekuriti Malaysia v. Lim Kok Boon & Anor* [2019] 1 LNS 1269 at paras. 32 and 33; *PP v. Chua Seng Huat* [1999] 6 CLJ 590 and *Suruhanjaya Sekuriti Malaysia v. Yap Wee Hin* [2022] 1 LNS 1879; [2022] MLJU 1915 at para. 25;

(iii) an "insider" need not be a corporate insider who is related to or a fiduciary of the company in question; it could very well be a stranger to the company. *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827 at para. 30;

(iv) there is no need to show the exact information conveyed to the "insider" or whether it is proven who had conveyed the information to the "insider". See *Suruhanjaya Sekuriti Malaysia v. Chan Soon Huat* [2017] 1 LNS 2175; [2018] 9 MLJ 782 at para. 37;

(v) there does not need to be a nexus between the inside information and the prohibited conduct. As soon as a person is in possession of material non-public information and he knows this to be the case, he simply cannot trade on the securities to which the information relates. See *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827 at para. 31;

(vi) there is no requirement for the plaintiff to prove that the defendant intended to use the information. See *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827 at paras. 23 and 32.

Court's Analysis and Determination

Defendant In Possession Of Inside Information

[43] As alluded to above, whether the defendant had possession of inside information can be established from circumstantial evidence. This may include a myriad of factors such as the informant's access to the inside

information, the defendant's access to the informant, the relationship between the defendant and the informant, the timing of the contact between them, the timing of the trades done by the defendant and the pattern of trades by the defendant, to name a few.

[44] In this particular case, it is the finding of this court that the defendant was indeed in possession of inside information based on the following circumstantial evidence disclosed to this court at the trial.

PW2's Possession Of Inside Information

[45] It is not in dispute that PW2 attended the Tokyo meeting.

[46] Independent evidence from OPC's representatives who attended the Tokyo meeting was given at the trial that:

(i) the offer price for the acquisition of HPI by OPC was discussed and negotiated during the Tokyo meeting;

(ii) PW2 gave a presentation and was one of the main persons negotiating the offer price with OPC; and

(iii) all the attendees of the Tokyo meeting were aware of the agreed price.

[47] PW2 himself testified that Albert Chan did make a price offer and there were discussions and negotiations on the share price at the Tokyo meeting.

[48] Further, PW2 himself had acquired 100,000 HPI shares on 27 January 2011 ("contract note dated 27 January 2011"), which was about a month before the Tokyo meeting and 150,000 HPI shares on 14 March 2011 ("contract note dated 14 March 2011"), which was almost immediately upon his return from the Tokyo meeting.

[49] In the light of the aforesaid, PW2 was clearly in possession of the inside information. The fact that PW2 may or may not have known of the consent given by OPC and or OPA for the acquisition in June 2011 is of no moment. This will be clear when considering what constitutes the inside information.

Communications Between Defendant And PW2

[50] It is not disputed by both PW2 and the defendant that after PW2 returned from Tokyo on 13 March 2011, there were communications between PW2 and the defendant on 14 March 2011, 15 March 2011, 16 March 2011, 10 June 2011 and 12 June 2011. In this regard:

(i) PW2's mobile phone number is 012-3342732;

(ii) PW2 communicated with the defendant *via* the defendant's mobile phone number of 012-2028958;

(iii) PW2 confirmed that the communications occurred; and

(iv) the defendant confirmed during cross-examination that the communications took place.

[51] More specifically, from 14 March 2011 to 16 March 2011, the defendant and PW2 communicated as follows:

Date	Time	Duration	Communication	Reference
14.3.2011	11:41am	56 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1279
	9:35pm	33 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
15.3.2011	8:18am	15 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	9:45am	57 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	4:36pm	37 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	6:23pm	22 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280
	9:53pm	49 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1042
16.3.2011	9:13am		SMS	Maxis Statement of Account for Toh Kai Fatt, B4, p 1282
	9:15am	19 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1043
	5:35pm		SMS	Maxis Statement of Account for Toh Kai Fatt, B4, p 1282
	6:39pm	37 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1043
	6:40pm	-	SMS	Maxis Statement of Account for William CH Tan & Associates, B4, p 1046
	6:48pm	32 seconds	Phone Call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1280

[52] On 14 March 2011, a day after he returned from the Tokyo meeting, PW2 himself entered into the contract note dated 14 March 2011.

[53] On 15 March 2011, one day after his initial communications with PW2, the defendant submitted his application for his new CDS account *via* AA Anthony Securities Sdn Bhd ("defendant's application for individual trading account"). The defendant's CDS account had an initial approved trading limit of RM1,000,000 and was a cash upfront account. Prior to opening the CDS account, the defendant had not traded on Bursa Malaysia before.

[54] On 16 March 2011, one day after opening the CDS account, the defendant acquired 335,000 HPI shares at the cost of acquisition of RM994,521.47 ("contract note dated 16 March 2011"). This made up 12.88% of the total market volume (2,600,480 shares traded) on 16 March 2011. This was the defendant's first-ever trade.

[55] On 17 March 2011, the defendant acquired a further 189,000 HPI shares at the cost of acquisition of RM602,023.36 ("contract note dated 17 March 2011").

[56] From 9 June 2011 to 12 June 2011, there were further communications between the defendant and PW2 as follows:

Date	Time	Duration	Communication	Reference
9.6.2011	1:06pm	1 minute 9 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
10.6.2011	5:08pm	2 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096
	5:36pm	39 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
12.6.2011	10:30am	3 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096
	10:58am	43 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
	11:44am	25 seconds	Phone call	Maxis Statement of Account for Toh Kai Fatt, B4, p 1322
	12:42pm	10 seconds	Phone call	Maxis Statement of Account for William CH Tan & Associates, B4, p 1096

[57] On 13 June 2011, the defendant acquired 450,000 HPI shares at the cost of acquisition of RM1,695,504.10 ("contract note dated 13 June 2011"). This was also merely two days before the announcement on 15 June 2011.

[58] The above shows a high volume of calls between PW2 and the defendant that had occurred following PW2's return from attending at the crucial Tokyo meeting, and during the defendant's unprecedented large purchases of HPI shares in March 2011. This also happened when the defendant opened his CDS account.

[59] Voon Woan Kuen ("PW6"), the plaintiff's investigating officer, testified on the frequency of communications between PW2 and the defendant from June 2010 to June 2011 as follows:

Month	Number of Calls/SMS between PW2 and the Defendant
June 2010	0
July 2010	3
August 2010	3
September 2010	8
October 2010	8
November 2010	0
December 2010	4
January 2011	2
February 2011	1
March 2011	26
April 2011	22
May 2011	8
June 2011	15

[60] As seen above, there was a sudden sharp increase in communications between PW2 and the defendant after PW2 returned to Malaysia from the Tokyo meeting on 13 March 2011.

[61] Apart from the acquisitions on 16 March 2011, 17 March 2011 and 13 June 2011 set out above, the defendant disposed of HPI shares on 21 April 2011, 22 April 2011 and 27 April 2011 ("contract notes dated 21 April 2011, 22 April 2011, 27 April 2011") and on 16 June 2011 and 17 June 2011 ("contract notes dated 16 June 2011 and 17 June 2011") for a profit. The months in which communications between the defendant and PW2 were the most frequent, *ie*, March 2011, April 2011 and June 2011, were also the months where the defendant acquired and disposed of HPI shares.

[62] From the above, it is clear that:

(i) the defendant's acquisitions of HPI shares coincided perfectly with the developments at the Tokyo meeting where the acquisition of HPI by OPC was agreed in principle. The defendant's acquisition of HPI shares on 16 March 2011 and 17 March 2011, occurred right after the Tokyo meeting, where the offer price of RM4.40 per HPI share was agreed upon. Similarly, the defendant's acquisition of HPI shares on 13 June 2011, took place two days prior to the Bursa announcement;

(ii) the defendant's opening of a new CDS account, acquisition of HPI shares and disposal of HPI shares coincided with the defendant's communications with PW2, particularly during a period of a surge in the number of communications between the defendant and PW2;

(iii) the value of the defendant's acquisition of HPI shares (a single counter in his initial investment) was RM994,521.47 on 16 March 2011, RM605,023.36 on 17 March 2011 and RM1,695,504.10 on 13 June 2011. On 16 March 2011, his acquisition volume of 12.88% of the total market volume (2,600,480 shares traded) on 16 March 2011 made him the top trader on Bursa Malaysia for that day;

(iv) the defendant had profited from his acquisition of HPI shares.

[63] To my mind, the timing of the communications between PW2 and the defendant and the timing of the defendant's trades in the HPI shares cannot be put down to mere coincidences.

The Defendant's Trading History And/Or Pattern

[64] The defendant's trading history and trading pattern in this case are also supportive of the plaintiff's case.

[65] Prior to opening the CDS account, the defendant had not traded on Bursa Malaysia at all.

[66] Of note is the fact that from the date of opening his CDS account on 15 March 2011 to the date of the announcement on 15 June 2011, the defendant had solely acquired HPI shares.

[67] The defendant's opening of the CDS account on 15 March 2011 and his acquisition of the HPI shares on 16 March 2011 and 17 March 2011 can also only be described as frantic:

(i) the defendant's opening of the CDS account on 15 March 2011 was one day after his initial communication with PW2, and four days after the Tokyo meeting. The same was a cash upfront account;

(ii) after that, the very next day, the defendant's first purchase on 16 March 2011 of RM994,521.47 was very close to the defendant's initial approved trading limit of RM1,000,000; and

(iii) the next day, he spent RM602,023.36 for his second purchase of HPI shares on 17 March 2011.

[68] In cross-examination, it was revealed that the defendant was not even sure how many HPI shares and or the value of HPI shares he was going to acquire:

> KSM No, no. I meant you put in 1 million and then you buy shares worth 990 for the first time you ever bought, you seem very certain that this investment is a good one, correct?
>
> TOH My Lord when I purchased this shares, I was there to purchase. At the end only I realise that I bought this amount, I continue to buy, at the end I check with the broker, broker told me that I have 900 over thousand, except the figure, at the time when I purchased because the share up and down. So after I complete my purchase, I have to ask him, let me know what is the price.

[69] Further, the defendant could not provide a satisfactory account as to the reason why he had specifically acquired shares in the corrugated cardboard or paper industry and even then, opted for HPI shares instead of other companies in similar industry.

[70] Quite apart from HPI, there were at the material time at least 18 other public listed companies on Bursa Malaysia in a similar industry as that of HPI, as set out by PW6 some of which the defendant agreed were in the same business of HPI, such as Boxpack Berhad and Muda Holdings Berhad. It is pertinent to note that Muda Holdings Berhad was also linked to an acquisition by OPC on 14 July 2011.

[71] Based on the evidence, it appears that the defendant had given instructions to his broker to acquire as many HPI shares as possible with the cash he had deposited for trading, which was close to his trading limit of RM1,000,000, before topping up the next day on 17 March 2011.

[72] For a first-time investor into the share market, the defendant appeared too surefooted in his purchase of the HPI shares as reflected in his 'sweeping' up of the HPI shares to the limit of his trading account on 16 March 2011.

The Defendant's Relationship With PW2

[73] The defendant contended that he had no knowledge of PW2's attendance at the Tokyo meeting nor the purpose of the same. In particular, learned counsel for the defendant relied on PW2's testimony that he did not tell the defendant any confidential information regarding the takeover of HPI shares by OPC and OPA prior to 15 June 2011.

[74] The defendant further contended that the communications during the impugned period of March and June 2011 pertained to the audit work that PW2 was carrying out for the defendant's company, BSPIA.

[75] Based on the aforesaid, it is contended that the plaintiff has failed to discharge its primary burden of establishing the existence of communication of inside information from PW2 to the defendant.

[76] With respect, this court is not persuaded by the defendant's aforesaid contentions.

[77] In considering PW2's testimony, it is necessary to appreciate the personal relationship between PW2 and the defendant.

[78] It is not disputed that PW2 and the defendant have had a business relationship since 2006, as PW2's firm, William CH Tan & Associates provided audit and tax services to the defendant's companies.

[79] Therefore, PW2 and the defendant had known each other for at least five years at the time of the defendant's acquisition of HPI shares. PW2 and the defendant's good relationship is further demonstrated by the fact that the defendant had utilised William CH Tan & Associates as his auditor and tax agent for his other companies, such as Green Leaf Corporation Sdn Bhd (since 2009), Ban Seng Idealboard Sdn Bhd ("BSI") (since 2009) and Ban Seng Precision Mould Sdn Bhd (since 2016).

[80] PW2 has been and continues to be the auditor and tax agent of at least four companies owned by the defendant. PW2 also has a long relationship with the defendant, having provided audit and tax services to the defendant for 16 years at the time of his testimony. PW2 had a vested interest to keep that relationship intact. The defendant was present in court to witness PW2's testimony.

[81] PW2 confirmed in cross-examination that he testified for the plaintiff because of the terms of settlement between the plaintiff and PW2, pursuant to which PW2 agreed to give evidence in proceedings against individuals who purchased HPI shares.

[82] PW2's evidence in totality must also be viewed against the backdrop that PW2 himself acquired HPI shares at the relevant time. PW2 then agreed to a settlement with the plaintiff without admission or denial of liability, where he agreed to pay to the plaintiff the sum of RM1,250,995.50, to resign from all directorships in public listed companies or to be involved in the management of any public listed company for a period of five years from the date of the settlement agreement.

[83] In other words, in giving his testimony, PW2 is torn between his duty to tell the truth to this court arising from his agreement with the plaintiff to testify as part of his settlement agreement with the plaintiff and his friendship with the defendant. In the process, PW2 demonstrated some 'selective memory' in his testimony.

[84] A clear example of the aforesaid is when during cross-examination, PW2 stated that he was unable to confirm that his communications with the defendant were related to audit work and stated that he could not remember the content of his telephone/SMS communications with the defendant around the time when the defendant traded on HPI shares:

> WAN I refer you to Question 10 and your answer to Question 10 of your WSPW2, Question 10 and your answer. Do you agree with me that the phone calls, the SMS from you and your office to the defendant are related to the auditing work for the defendant's company due for filing by end of June 2011?
>
> TCH I'm not sure about the content of the phone call or the message.

[85] Thus, whilst PW2 appeared confident that he did not divulge any confidential information to anyone including the defendant, when asked specifically about his phone calls and SMS messages with the defendant, PW2 testified that he is 'unable to recollect or comment on the contents of the communications with the defendant'.

[86] PW2's answer to the said specific question posed by learned counsel for the defendant was conspicuously equivocal and decidedly vague. The contents of the calls and messages at the material times, if related to the auditing work for the defendant, would have been something that PW2 could quite easily verify from PW2's company's records and mobile phone.

[87] It must be noted that PW2 himself was investigated for insider trading in relation to the HPI shares and his communications with the defendant during the material times would have formed part of the investigations against PW2 for which one would have expected PW2 to have taken the steps to ascertain.

[88] Moreover, if PW2 could not remember whether he had or had not communicated any inside information to the defendant, his statement on the stand that he did not communicate confidential information to the directors of the defendant's group of companies, appears inconsistent.

[89] In fact, when this court asked PW2 to explain his answer in cross-examination in view of his answer in A13 of WS PW2, this was what he said:

> JUDGE So what counsel is asking you to clarify to the court is this, that how do you explain your answer that you have never committed, communicated any confidential information to the defendant if you cannot remember or do not know the content of the conversation that you had under Question 10?
>
> TCH Ok. My reply basically, the first question is basically I do not communicate to anybody, not only the defendant. So that's my reply, right. So as to the, what you call, the text messages and the phone call, I cannot remember.
>
> JUDGE Correct.
>
> TCH So these are two separate things.

[90] Quite clearly, PW2 was struggling to reconcile his inconsistent stance. He was a witness with conflicting duties as alluded to above. PW2 chose to adopt a "I can't remember what I said it was so long ago" approach so as not to incriminate himself and the defendant, his long-standing client.

[91] In any case, the upshot of PW2's testimony is that PW2 had maintained that he cannot recall what he said in the impugned communications and therefore impliedly cannot recall if he communicated inside information during those occasions.

[92] Learned counsel for the defendant submitted strenuously that PW2, being the witness of the plaintiff, had categorically testified that he did not communicate any confidential information regarding 'the GO and acquisition' of HPI to the defendant and as such, this fact is binding on the plaintiff. Reliance was placed on the case of *Al Sharhan Sdn Bhd & Anor v. Edipro Construction & Engineering* [2020] 1 LNS 1046; [2021] 10 MLJ 585 where Liza Chan JC (as she then was) referring to the decision of the Court of Appeal in *Lim Guan Eng v. PP & Other Appeals* [1998] 3 CLJ 769; [1998] 3 MLJ 14 affirmed the 'it is well-established that a party is bound by the evidence of witnesses whom he calls in proof of his case and this rule is enforced with full rigour in civil cases'.

[93] In the first place, it must be noted that it is not the 'GO and the acquisition of HPI' (which were events that took place after the announcement) that the plaintiff is relying upon as the 'material non-public information'. Instead, what the plaintiff is claiming is that PW2 had communicated to the defendant the information pertaining to the proposed takeover by OPC of HPI shares from Lucrabase sometime in March 2011. PW2 did not testify that he did not make such communication to the defendant.

[94] Further, PW2 had expressly clarified during re-examination that his testimony that he did not communicate any confidential information to anyone is to be treated separately from his testimony that he could not recall the contents of his text messages and phone calls to the defendant. To me, this is telling. PW2 was clearly not prepared to go so far as to state that he did not communicate the proposed takeover of HPI shares by OPC to the defendant in March 2011.

[95] To my mind, PW2's testimony therefore does not advance the defendant's case and does not refute the finding of this court that PW2 did in fact communicate inside information to the defendant.

[96] To my mind, based on, *inter alia*, the timing of the communications between the defendant and PW2 and the proximity of the defendant's purchases of the HPI shares to the said communications, as well as the defendant's trading pattern and volume, this court is inclined to accept the plaintiff's submission that PW2 did communicate inside information to the defendant.

[97] In this case, the overwhelming body of contemporaneous, documentary and circumstantial evidence leads to the irresistible conclusion that the defendant was in possession of inside information at the time of his acquisition of HPI shares and that he would have received this from PW2.

[98] The fact that PW6, the plaintiff's investigating officer, had failed to adduce the actual contents of the SMS messages or the audio recordings of the phone calls between PW2 and the defendant, to my mind, does not mean that this court cannot rely on circumstantial evidence to arrive at its conclusion.

[99] I disagree that the plaintiff's failure to call someone from the telecommunication company to produce the audio recordings and or the contents of the SMS messages, in this case, means that such recordings or text messages, if produced, would be unfavourable to the plaintiff. This is because the defendant has not shown that such direct evidence was available to the plaintiff who had chosen to suppress the same. The defendant did not call anyone from the telecommunication company to testify that the contents of the SMS messages and or the audio recordings of the conversations between PW2 and the defendants were in fact available at the material time. This in fact also put paid to the defendant's complaint that the plaintiff's delay in commencing the present action has caused prejudice to him on the ground that he had lost the opportunity to retrieve such audio recording and SMS messages from the telecommunication company.

[100] In any case, the plaintiff is entitled to put their case based on circumstantial evidence instead of direct evidence.

Defendant's Explanation

[101] In arriving at the aforesaid finding of fact, I have also taken into consideration the defendant's explanation as to why he acquired the HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011.

[102] I do not find the explanation to be credible. The defendant gave different reasons, none of which is corroborated by the evidence led by him.

[103] According to the defendant, he was looking to invest in companies similar to two of his companies, *ie*, BSPIA and Ban Seng Idealboard Sdn Bhd ("BSI") when he acquired the HPI shares.

[104] No evidence was given by the defendant as to how his experience in the corrugated carton business would assist him in coming to an informed decision to acquire HPI shares. The defendant merely references the "growth potential" of the industry without reference to any documents or evidence to suggest his belief in the "growth potential".

[105] The defendant's following conduct contradicted his alleged belief in the growth potential of the corrugated carton business:

(i) the defendant only acquired HPI shares, and not shares in any other public listed company in the same industry, such as Boxpack Berhad and Muda Holdings Berhad, companies, which the defendant had knowledge of, and which he agreed were in the same industry as HPI. It is pertinent to note that Muda Holdings Berhad was also linked to an acquisition by OPC on 14 July 2011;

(ii) there were at least 18 public listed companies in the same industry and the defendant did not provide any rationale as to why he picked HPI over the others;

(iii) the growth potential explanation is belied by the defendant's conduct in selling the HPI shares that he bought quite quickly after he bought them, demonstrating a speculative purchase, not a long-term investment in the industry; this conduct then begs the question again, why a "get rich quick" purchase with this counter, not any other counter in the same industry. The defendant was unable to provide any explanation.

[106] Further, BSPIA, one of the companies that the defendant referenced in his amended defence and witness statement, is not even in the corrugated carton business. BSPIA was in the business of precision plastic components for tools and equipment.

[107] In respect of the defendant's averment that BSPIA has been a user and/or buyer of corrugated paperboard, the same is a bare allegation and no evidence was led to support this. There is nothing in BSPIA's annual report and financial statements to support this averment.

[108] BSI, the company referenced in the defendant's solicitors' letter, and in the defendant's witness statement, had not commenced business as of 31 December 2010. At that time, it was a RM2 company.

[109] Instead, BSI commenced its business operations sometime between 1 January 2011 to 30 April 2012.

[110] Based on the above, the defendant's explanation that he acquired HPI shares due to his experience in the corrugated carton business since 2009 is patently untrue.

[111] The defendant averred that he acquired HPI shares based on the encouraging quarterly financial results announced by HPI in the defence. He also stated the same in his witness statement. This is not credible for the following reasons.

[112] The last quarterly result announced by HPI prior to the defendant's acquisition of shares on 16 March 2011, was on 27 January 2011. A perusal of the plaintiff's expert opinion will show that there was no announcement on HPI's quarterly results from 24 February 2011 to 15 June 2011. This

suggests that there was nothing remarkable about the HPI counter or performance in the public domain in the period immediately preceding the defendant's investment of RM1.6 million across two days in the counter.

[113] The defendant also did not produce any evidence of the quarterly financial results that he relied on to invest over RM1.6 million across two days in HPI as his first-ever investment in shares. This is despite the quarterly financial results of a public listed company being publicly available on Bursa Malaysia as admitted by the defendant.

[114] It is clear that the defendant did not adduce HPI quarterly financial results because he was unable to explain the figures within the financial results that purportedly led him to acquire HPI shares.

[115] In this regard, it does not justify the defendant's hurried manner in opening the CDS account on 15 March 2011 and acquiring over RM1.6 million worth of HPI shares over two days on 16 March 2011 and 17 March 2011, when HPI's first quarterly result for 2011 was already public for some time prior to the defendant's acquisition of HPI shares.

[116] When asked whether the defendant had looked at HPI's quarterly results in 2011, in cross-examination, the defendant was initially unable to even confirm the same. The defendant quickly changed his position later.

[117] The defendant further testified that after disposing of HPI shares in April 2011, he re-invested in HPI on 13 June 2011 because of the market sentiment as the share was still moving upward. He also spoke about the "upward price trend of HPI prior to 2011".

[118] This was not a position that was previously taken by the defendant in his amended defence and was raised for the first time at trial. This testimony suggests that the defendant was an investor of HPI based on speculation and price trends, which differs from the defendant's position that he invested in HPI based on the quarterly financial results of HPI or based on his experience in the corrugated carton industry.

[119] The defendant did not explain why or how he chanced upon or decided to look at HPI's 2011 quarterly results.

[120] If the defendant's main basis for acquiring HPI shares was based on quarterly results, it does not make sense for the defendant to dispose of HPI shares in April 2011 and then re-acquire the same on 13 June 2011 at a higher price. This put paid to the defendant's defence that his purchase of the HPI shares was based on the financial performance and financial position of HPI.

[121] If the defendant's main basis for acquiring HPI shares was based on the alleged "upward price trend", the "upward price trend" only started on 8 June 2011, for three days (8 June 2011, 9 June 2011 and 10 June 2011). Prior to that, the share price for HPI was in fact, trending downwards, commencing from 12 May 2011 to 7 June 2011.

[122] Apart from the above, the defendant's acquisition of HPI shares on 13 June 2011 was in the sum of RM1,695,504.10. The large value of the acquisition certainly does not match the trading pattern of an investor who is merely making acquisitions based on speculation and price trends.

[123] The aforesaid suggests that the defendant had acquired shares in HPI was not due to his experience in the industry nor the upward price trend of HPI shares, but his possession of inside information.

[124] In the amended defence, the defendant referenced OPC and OPA's presence and acquisition of companies in Malaysia based on reported news and activities. The defendant also stated that he was aware of OPC's acquisitions of GS Paper and Packaging Sdn Bhd ("GSPP") and United Kotak Berhad ("UKB") as reported in Bursa Malaysia and newspapers. Whilst not expressly pleaded, it appears that the defendant is suggesting that there was an acquisition drive by OPA and OPC (Japanese entities) of companies in Malaysia in the business, suggesting presumably, that HPI was a potential acquisition by OPC and OPA at the time.

[125] However, the defendant does not explain why an acquisition of GSPP and UKB would result in an acquisition of HPI and not at least 18 other companies in the paper and packaging business.

[126] In the defendant's witness statement, he stated that he had disposed of the HPI shares due to the change in management to foreigners and he had no familiarity with them.

[127] This is contradictory. If the defendant had knowledge of OPC and OPA's presence and acquisition of companies in Malaysia and envisaged an acquisition of HPI by OPA and OPC, it does not make sense for the defendant to state that he had no familiarity with OPC after seeing the announcement, and hence disposed of his shares in HPI.

[128] Based on the very vague and inconsistent evidence the defendant gave to justify his purchase of the HPI shares in such a large quantum in such a short time and in a frantic manner, it is apparent that the defendant is not a credible witness.

[129] In the amended defence, in response to the averments that he had communicated with PW2, the defendant pleaded that the defendant had used a registered staff shared line with a MAXIS account.

[130] The suggestion with this plea was that it was not that he spoke to PW2 in the calls identified by the plaintiff but instead it was his staff speaking to PW2 using a shared Maxis line. This plea was abandoned by the defendant at the trial and no evidence was led on the same. At trial, there was no challenge raised to the fact that the identified calls and text messages were

between PW2 and the defendant. The question arises, why lie about the communications between PW2 and the defendant (the plea in the amended defence being inconsistent with the evidence led) if those communications were in fact 'kosher' and no inside information was communicated or received during those communications?

[131] During the trial, it became apparent that PW2 and the defendant were well aware of each other's mobile phone numbers and would communicate directly using the same.

[132] By making the above referenced plea and thereafter abandoning the same, the defendant appeared desperate to deny the existence of his communications with PW2, giving rise to an inference that the defendant did not want the same to be established at all. This further undermined his credibility.

[133] Confronted with the evidence, the defendant sought to explain that the communications between PW2 and the defendant between March to June 2011 was to do with the change in the accounting period of BSPIA.

[134] This point was not pleaded in the defendant's amended defence.

[135] Interestingly, the defendant's expert, Low Chee Keong ("DW3")'s expert report of which he affirmed an affidavit on 11 October 2022, DW3 stated as follows:

> 67. Paragraph 40 of the plaintiff's statement of claim states that "William Tan communicated inside information to the defendant. *The timing of the telephone calls* and text messages exchanged between William Tan and the defendant and the timing of the defendant's purchase of HPI shares *supports this conclusion*.
>
> 68. I am at a complete loss as to how such a definitive and unequivocal conclusion can be drawn to the express exclusion of all *others including the change to the financial year ends of companies that were owned by the defendant during the material time which requires substantial advanced and continuous planning with auditors to ensure full compliance with applicable regulations and laws*. (emphasis added)

[136] Subsequently, on 27 October 2022, the defendant's solicitors circulated amendments done by the defendant to his witness statement that was previously submitted to the court to add a new Q&A47 and Q&A48, to reference a change in the accounting period of BSPIA from December 31 to April 30, where BSPIA's annual report and financial statements for the period from 16 November 2009 to 31 December 2010 is subsequently followed by BSPIA's annual report and financial statements for the period from 1 January 2011 to 30 April 2012.

[137] In cross-examination, when DW3 was asked about the basis on which he suggested the change of the accounting period as being the reason for the increased communications, he stated that it was in the pleadings and/or the

plaintiff's expert reports. However, neither the pleadings nor the plaintiff's expert report state the same. Subsequently, DW3 stated that he could not remember.

[138] When asked in cross-examination when DW3 was retained, DW3 stated that he was only retained in early October 2022.

[139] It appears that the defendant's testimony was amended to reference the change in the accounting period in BSPIA after DW3's rebuttal expert report was issued. It did not form part of the defendant's pleaded case. This brings into question the *bona fides* of the justification, it being something the defendant raised very belatedly and after his expert raised the same.

[140] Accordingly, this court does not place much weight on the purported justification for the communications between PW2 and the defendant. Significantly, PW2 did not state that his communications with the defendant during this period was to do with the change in the accounting period as contended by the defendant.

[141] It is also said that the plaintiff had failed to adduce direct evidence of what was actually communicated by PW2 to the defendant. Although evidence was adduced on the dates and time of the communications between them, the actual contents of the communications were not produced. No voice recordings or contents of the text messages were placed before this court by the plaintiff.

[142] Based on the aforesaid, the defendant contended that the plaintiff has failed to discharge the burden of establishing that the defendant had possession of the inside information.

[143] With respect, as alluded to above, the omission to adduce direct evidence of the contents of the communications between the defendant and PW2 does not mean that this court is precluded from arriving at a conclusion that the inside information was indeed communicated by PW2 to the defendant based on circumstantial evidence. This is well-established by case law.

[144] Learned counsel for the defendant also pointed to the fact that there was a corresponding increase in the frequency of communications in March and April 2011 between the defendant and DW1 who was the chief operating officer of PW2's accounting firm and a director of the defendant's tax firm. The suggestion was that the communications between PW2 and the defendant during the same period were related to the auditing and tax services rendered to the defendant at the time and had nothing to do with the inside information.

[145] This aforesaid is a classic *non sequitur* argument. It simply does not follow that merely because DW1 had communicated non-confidential information to the defendant that PW2's communications would similarly acquire the same character.

[146] Finally, the defendant pointed to the fact that there was a gap between the defendant's purchases in March 2011 which he disposed of in April 2011 and a subsequent purchase in June 2011. According to the defendant, this shows that the defendant had purchased the HPI shares based on an uptrend in the price of the shares and not on any inside information.

[147] With respect, once it is established that the defendant had possession of inside information and the inside information was not generally available, the fact that the defendant had disposed of his initial purchases and there was a gap in time before a subsequent purchase is irrelevant.

[148] Similarly, the contention that PW2's conduct in selling the HPI shares that he purchased in March 2011 at RM3.74 and RM3.65 sometime on 21 April 2011 and 22 April 2011 respectively is not consistent with someone who had information that the HPI shares would be acquired at RM4.40 does not hold water. Each individual has a different investment and risk appetite. The fact that the defendant had sold the HPI shares before the share price had increased to RM4.40 does not mean that he did not have possession of the inside information. Even at RM3.74 and RM3.65, the defendant's gain was not insignificant.

Inside Information Not Generally Available

[149] This court agrees that the inside information was not generally available when the defendant acquired HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011.

[150] Section 184 of the CMSA explains when information is regarded as generally available, as follows:

> (1) For the purposes of this Subdivision, information is generally available **if the information has been made known in a manner that would, or would tend to, bring it to the attention of reasonable persons who invest in securities** of a kind whose price or value might be affected by the information, and since it was so made known, a reasonable period for it to be disseminated among, and assimilated by, such persons has elapsed. (emphasis added)

[151] The following confirms that the inside information was not generally available.

[152] Firstly, the plaintiff pleaded that the inside information was only made generally available on 15 June 2011, when OPA's conditional takeover offer was announced *via* the announcement. In response, the defendant admitted this. The defendant pleaded as follows:

> Paragraph 32, the said plaintiff's statement of claim is referred and the defendant states that the inside information, if any to which is denied, may probably only arose between the time of 14 June 2011 and 15 June 2011." [amended defence, paragraph 29, A, p 82]

[153] As such, the defendant does not deny that the inside information was only made generally available on 15 June 2011. The defendant's position was, instead, that the inside information only existed between 14 June 2011 and 15 June 2011.

[154] Therefore, the defendant must be deemed to have admitted that the inside information was only made generally available on 15 June 2011. The defendant also did not plead otherwise in other paragraphs of the amended defence.

[155] Secondly, the inside information only arose from private meetings between OPC and HPI's representatives, including the Tokyo meeting. These meetings were not public. Therefore, the inside information could only be known to the attendees of the private meetings, and to any persons to whom attendees of the private meetings had communicated the inside information to, such as the defendant, and would not be brought to the attention of reasonable persons who invest in securities.

[156] The execution of the confidentiality agreement by OPC and Lucrabase underscores the fact that the inside information was considered to be sensitive and was to be treated as confidential, *ie*, it shall remain non-public until announced on Bursa Malaysia if the proposed takeover materialised.

[157] Thirdly, the inside information was only made generally available through the announcement. This was confirmed by PW6. PW6 also stated that she confirmed the same by checking previous announcements made by HPI to Bursa Malaysia and conducting online searches.

[158] In this respect, the defendant did not provide any documentary or oral evidence to show that the inside information relating to HPI was generally available prior to the announcement.

[159] Fourthly, both parties' experts took the view that the announcement was material. As explained by the plaintiff's expert, David Meow ("PW7"), this means that the inside information could not have been generally available prior to the announcement, as information, after being generally available, ceases to be material.

[160] Both PW6 and PW7's testimonies above were not challenged during the trial. This amounts to acceptance of their testimony (see *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; [1995] 2 MLJ 770).

The Defendant Knew Or Ought To Know The Inside Information Was Not Generally Available

[161] In the Singapore Court of Appeal decision of *Lew Chee Fai Kevin v. Monetary Authority of Singapore* [2012] 2 SLR 913, the court held as follows in relation to the application of the limb 'know or ought reasonably to know' in relation to an insider as follows at para. 139:

> Hence, in examining the issue of whether the alleged insider trader knew or ought reasonably to have known that the information in question was not generally available, *the court concerned should first consider if a reasonable person would consider the information not to be generally available. If so, consideration would then be given to the alleged insider trader's circumstances (including his or her mental state, experience and level of commercial expertise)* in order to determine if there are subjective factors which would prevent him from arriving at the same conclusion.
>
> (emphasis added)

[162] In the statement of claim, the plaintiff pleaded that the defendant knew or ought to have reasonably known that the inside information was not generally available at the time he acquired HPI shares.

[163] This was not specifically denied by the defendant. Instead, the defendant's denial that he was an "insider" was based on his averment that he did not possess any material non-public information or inside information and that his acquisition of HPI shares was linked to other factors.

[164] Accordingly, the defendant must be deemed to have reasonably known that the inside information was not generally available at the time he acquired HPI shares.

[165] Further, PW6's testimony that the defendant knew or ought reasonably to have known that the inside information was not publicly available was not challenged during the trial. This amounts to acceptance of PW6's testimony (see *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; [1995] 2 MLJ 770).

[166] The following facts also support the inference that the defendant knew or ought reasonably to know that the inside information was not generally available:

(i) it is the defendant's own position that he was aware of details that were in the public domain pertaining to the industry, such as the acquisition of GSPP and UKB. If the defendant is to be believed, he would be an investor who is typically aware of the news surrounding HPI and the industry. He would therefore be aware that the proposed acquisition of HPI was not within the public domain until 15 June 2011;

(ii) as set out above, the defendant's opening of the CDS account and the purchase of HPI shares was done in a hurried fashion which coincided with the defendant's communications with PW2, with a high acquisition value, which suggests that the defendant knew that such information would affect the price of HPI shares, and he had an advantage, as the news had not yet become public;

(iii) the defendant is a person with a high level of commercial expertise. He is a director of several companies, including BSPIA and BSI. He is a managing director of BSPIA since 2006. Prior to that, he was involved in BSPIA when it was a sole proprietorship; and

(iv) the inside information itself, being the proposed takeover of HPI, is price sensitive information as the proposed takeover would entail the purchasing of HPI shares by OPA at a premium above market price. This is an element which will further be explained below when we examine the evidence of the experts.

[167] Therefore, the defendant clearly knew and or ought to have known that the inside information was not generally available to the public.

If Generally Available, A Reasonable Person Would Have Expected The Inside Information To Have A Material Effect On The Price Of The Securities

[168] Section 185 of the CMSA explains what constitutes a material effect on the price of securities:

> For the purposes of this Subdivision, an information that *on becoming generally available would or would tend to have a material effect on the price or value of securities*, refers to such information which would or would tend to, on becoming generally available, *influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities*. (emphasis added)

[169] In examining this element, both parties have called upon experts to testify as to what constitutes 'inside information' and how the availability of the inside information would affect or influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of the HPI shares. This will now be the focus of the next part of this judgment.

Plaintiff's Expert's Testimony

[170] PW7 comprehensively explained in his re-examination that to him, what constitutes inside information in this case was the information pertaining to the proposed acquisition and not a concluded acquisition of the HPI by OPC from Lucrabase.

[171] The plaintiff's expert, PW7, testified on the materiality of the inside information, *ie*, the proposed acquisition of HPI. PW7 concluded that the inside information was material and it would tend to influence a reasonable investor to buy HPI shares after applying the "reduced form" approach to the content of the announcement, based on the following analysis:

(i) the target stock price typically rises dramatically soon after the takeover announcement. In this case, when the announcement became public on 15 June 2011, the notable closing price for HPI shares was approximately RM3.93 per share. This would represent a premium of RM0.47 per share, or 12%. Up until 14 June 2011, the HPI shares' five-day volume weighted average price (VWAP) was approximately RM3.75 per share, representing a 17.3% premium. Prior to that, HPI's share price never exceeded RM3.93 per share. Therefore, the inside information is information that could have a material effect on the price of HPI shares;

(ii) the announcement brings news of a conditional takeover which if successful, would result in HPI being delisted. This potential change in the listing status alone is material information. Whilst the offer price was RM4.40 per share, such information is not essential for the assessment of materiality. A reasonable investor, upon possession of news of an impending "takeover", would have formed a reasonable expectation that the offer price would tend to be a substantial premium above the current market price. Words such as "takeover", "M&A" and "acquisition" used in their ordinary meaning would be adequately specific to be material. Anyone in possession of that core, immutable information of HPI is in possession of material non-public information. In cross-examination, PW7 clarified that the communication need not contain one or more of these three words; these are merely examples but any other words which bear the same meaning would also be material;

(iii) reliability is strong if a person possesses the inside information is from a corporate insider;

(iv) there are no extraneous material confounding factors, *ie*, unrelated news pertaining to global events, national events, or other non-company specific news pertaining to the industry of HPI that could cast doubt on the assessment of the materiality of the information in the announcement;

(v) the announcement contains information that is not routine, anticipated, or pre-announced (save for the suspension a day earlier). The announcement contains information that will eventually drive the holders of HPI shares to make a decision. A reasonable investor would deem the acquisition information to be important in determining his decision-making process when making investment choices at the material time.

[172] In relation to sub-para. (iii) above, as established above, PW2 was present at the Tokyo meeting. Therefore, he is a "corporate insider"; the inside information coming from him would also fulfil the criteria of reliability in PW7's analysis.

[173] Based on PW7's analysis above, it is clear that the inside information is information which, on becoming generally available, a reasonable person would expect it to have a material effect on the price of securities.

[174] In cross-examination, the only substantive challenge to PW7's analysis was that OPC's board did not give approval until 14 June 2011; therefore, the acquisition was not "confirmed". To this, however, PW7 testified that this did not change his conclusion. This is because to PW7, the confirmation of the proposed acquisition is but a natural next step to the proposed acquisition.

Defendant's Expert Witness

[175] On the issue as to what constituted the inside information, the defendant's expert, DW3's evidence did not expressly address PW7's reduced form approach, let alone to reject the same. Significantly, DW3 did not proffer any alternative to the reduced form approach in deriving what would constitute inside information in this case.

[176] In cross-examination, DW3 made concessions that the proposed takeover of HPI would influence reasonable persons who invested in securities in deciding whether to acquire or dispose of HPI shares.

(i) DW3 agreed that even on his own test *ie*, whether there is a substantial likelihood that the fact would have assumed significance in the investment decision of the reasonable investor who customarily and/or is likely to deal in the HPI shares, a reasonable investor would be interested in information of the proposed acquisition of HPI. In fact, a reasonable investor would be even more likely to be interested in information relating to the proposed acquisition of HPI.

> KSM Yes, so with your definition it is even more likely I would suggest that the reasonable investor would be interested in information of the proposed acquisition of HPI. Would you accept that?
>
> LCK Yes.

(ii) DW3 agreed that a reasonable investor would want to know that there is going to be a takeover of HPI before they make an investment in HPI.

(iii) DW3 also agreed that if a reasonable investor knew about the proposed acquisition in March, it would be material from that time right up to the announcement.

[177] Accordingly, I accept the testimony of PW3 that the inside information in this case was the proposed takeover of HPI which up until the announcement was information not publicly available. I have no reason to reject PW3's reduced form approach despite learned counsel for the defendant urging this court to do so.

[178] Learned counsel for the defendant contended that because the proposed acquisition of the HPI shares by OPC was subject to the consent from its board of directors and subject to the consent from the securities commission, there were uncertainties and ambiguities that rendered the inside information 'non-material'.

[179] I disagree. I accept the testimony of PW3 that such consents by the OPC's board of directors and the Securities Commission were merely the next natural steps towards the proposed acquisitions. Barring unforeseen circumstances, such consents were a matter of course. They do not in any way render the inside information in this case uncertain or ambiguous as contended.

[180] Indeed, the fact that a proposed takeover itself would have a material effect on the price of securities is also recognised in case law.

[181] In *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827, the plaintiff brought an action against the defendant for acquiring shares in Worldwide Holding Bhd whilst in possession of inside information, which was the proposed privatisation of Worldwide Holding Bhd. The High Court found that:

(a) the information was material as evidenced by the sharp increase in share price following the publication of a news article and a Bursa announcement [pp. 80 - 81].

> [137] *It has been established in Australian cases such as R v. Doff and R v. Rivkin (2004) 59 NSWLR 284, that evidence relating to the movement in price of the relevant securities after an announcement of the information that was in the possession of a defendant or after the publication of such information was relevant and admissible for the purposes of determining the materiality of that information* (see the passage quoted at para 124 above.) This is the case even though the materiality of the information in question is to be ascertained at the time of the trades that are complained of. Put another way, *the effect that the subsequent publication of the information had on the share price could be used to determine whether or not the information was material at the time the defendant traded in the shares*.
>
> [138] This, in my judgment, stands to reason and common sense, for if the information had been disclosed to the public and had been assimilated by reasonable investors prior to the announcement of that information, then one can reasonably expect that the announcement would not have any effect on the share price. *The fact that there was a sharp increase in the share price following the publication of the Star article and the announcement on 23 August 2006 supported the plaintiff's contention that the information regarding the privatisation was material* ...

(b) it would have been in the reasonable contemplation of a reasonable investor that, if PKNS was proposing to undertake a privatisation, it would have to offer, or cause to be offered, a price to the other shareholders in Worldwide Holdings Bhd that would be at a significant premium over the market price at the time, in order for there to be sufficient incentive for them to vote in favour of the privatization [p 82, 84].

> ... [143] In my judgment, *the fact that a majority shareholder was contemplating a privatisation of its listed subsidiary, without more, was already material information*. Regardless of the mode by which the privatisation was to be effected, Information that a privatisation was in contemplation was information that would influence reasonable investors in their investment decisions...

A … [151] In my judgment, *it would have been in the reasonable contemplation of a reasonable investor that, if PKNS was proposing to undertake a privatisation, it would have to offer, or cause to be offered, a price to the other shareholders that would be at a significant premium over the market price at the time, in order for there to be sufficient encouragement for the shareholder to vote in favour of the privatisation or to accept a general* B *offer. This would be the case regardless of the mode by which the privatisation was to be effected …*

[153] For these reasons, *I was of the view that the fact that PKNS was contemplating a privatisation of Worldwide Holdings Bhd was, without more, information that a reasonable person would expect to have a material* C *effect on the price of Worldwide shares*. It was not necessary for the Commission to prove that the defendant knew, at the time he traded in the Worldwide shares, which route the privatisation was to take, or what the offer price of the shares was to be.

(emphasis added)

D **[182]** Paragraph 9.02 of the Bursa Malaysia Main Market Listing Requirements provides that a listed issuer must disclose all information necessary for informed investing and take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information.

E **[183]** Paragraph 9.03(2) of the Bursa Malaysia Main Market Listing Requirements provides as follows:

> (2) Information is considered material, if it is reasonably expected to have a material effect on – (a) the price, value or market activity of any of the listed issuer's securities; or (b) the decision of a holder of securities of the listed issuer or an investor in determining his choice of action.

F **[184]** As observed by PW7, HPI itself considered the information content of the announcement to be "material" under the Bursa Malaysia Listing Requirements, as it requested for HPI to suspend trading of its shares on 14 June 2011 pending a material announcement, which is the announcement. This was not challenged by the defendant's counsel during cross- G examination.

[185] Regrettably, I find the DW3's expert testimony unconvincing and at times less than forthright.

[186] An example of this is when learned counsel for the plaintiff sought H DW3's confirmation that material information that was disclosed in March 2011 would remain material until the announcement on 15 June 2011. PW3 prevaricated and only agreed to the suggestion after this court repeated the question to him.

I

[187] DW3 has demonstrated to have not been candid to this court.

[188] In his witness statement, DW3 testified that he was competent to testify on the issue of materiality as he had been engaged as an expert witness and testified in matters involving assessment of materiality in the context of insider trading in Hong Kong, Malaysia and the United States of America, and that his evidence was not rejected by any of the courts in these different fora.

[189] During the trial, it was revealed that DW3 had omitted to disclose the fact that some of his evidence was in fact neither accepted nor rejected by these courts, as no findings were made on his expert evidence. PW3's answers during cross-examination are reproduced:

KSM	Ok. And then you say 7 verily believe these attest to my competence as none of my reports or testimonies were rejected by the different fora". Do you mean that they were accepted by the courts in those countries?
LCK	They were not rejected.
KSM	What do you mean by that? (... 00:21:22 until 00:21:23 inaudible)
LCK	I am, but I hope you understand that I am –
KSM	No.
LCK	I'm bound by confidentiality. I cannot disclose the clients in those cases. The Instructing solicitors.
KSM	I'm not asking you to disclose the clients. I'm asking you what you mean. You've told the judge here that they were not rejected. So I'm saying what do you mean? Do you mean they were accepted or not?
LCK	That's where I need to clarify. *A case was settled and there was no pronouncement on rejection or acceptance*. That's why I hesitate to answer your question. Is that alright?
KSM	No. A case was settled. Now we got three cases. Please tell us which case was settled?
LCK	I am still bound by confidentiality. That's where my problem arises. When I signed the engagement, there was a confidentiality clause.
KSM	Professor Low, you've come to court to say your testimonies were not rejected.
LCK	Yes but that is where, My Lord, I may have to seek directions from My Lord. I have a bit of a problem with this question.
JUDGE	I don't quite understand this confidentiality that you are talking about.

A

LCK Because in my letter of engagement, I am not supposed to disclose the parties.

JUDGE We are not asking you to disclose the parties. We are just asking you, at least counsel is asking you whether your testimonies were accepted.

B

LCK That's why My Lord. I have a bit of a problem with that one because in the settlement, it didn't reach a final conclusion because I was still testifying. I hope Your Lord see, My Lord sees my point. I was in the midst of testifying before the end conclusion of my testimony –

C

JUDGE So your testimony is really that your reports and testimony is were neither accepted nor rejected.

LCK In that particular case, yes, My Lord. That's why I have that problem In answering this –

KSM It's a huge difference.

D

JUDGE *No, you had no problem in saying that it was not rejected but you seem to have a problem in saying that it was accepted. So I'm saying to you, perhaps a better way of putting it is for you to say that your testimonies were neither accepted nor rejected.*

E

LCK Yes, that Is good, My Lord. Thank you very much. That I can accept.

(emphasis added)

[190] It was then revealed during cross-examination that DW3's evidence given in Hong Kong mainly relates to the Hong Kong disclosure requirements pursuant to the Hong Kong Listing Rules, as opposed to the assessment of materiality of information in the context of insider trading.

F

[191] In cross-examination, it was also revealed that the evidence that DW3 gave in the United States of America was in relation to an employment dispute, not insider trading.

G

[192] Experts who attend before the courts to give their expert opinions have a duty to frankly and fully disclose their credentials and should not be economical on the truth in order to enhance their status or achievements as an expert in the relevant areas before the court.

H

[193] Further, DW3 was caught wrongfooted on a few occasions in respect of the facts that he had relied upon in support of his conclusion. For instance, DW3 stated that there was information regarding GSPP and UKB in the public domain which was omitted by PW7, so it was within the reasonable investor's contemplation that HPI might have been a potential acquisition target, which is a "extraneous material confounding factor" that may affect HPI's share price at the time of the announcement.

I

[194] In cross-examination, when pointed out that the acquisition of GSPP was in 2010 and the finalisation of UKB's acquisition was in February 2011, DW3 admitted that he was merely 'raising possibilities' and he did not come to a conclusion whether it would be relevant to HPI from March onwards.

[195] Similarly, DW3 stated that PW7 has failed to highlight the contribution of retail investors which allegedly dominate the Bursa Malaysia market, which "buy on rumours and sell on fact". However, DW3 admitted in cross-examination that the same is also speculative as there was in fact no evidence that there were rumours in the market that could have affected the share price of HPI.

[196] Further, in contrast to PW7's expert reports, DW3 did not even explain his methodology, assumptions made or research he undertook in relation to the stock market in Bursa Malaysia and the HPI counter during the material period when the defendant acquired the HPI shares until the announcement.

[197] On this point, the Supreme Court decision of *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31 is instructive:

> Mr Joginder Singh has attacked Mr Phan's evidence on the ground that he did *not give reasons for coming to his conclusion that the signatures on each of the 97 cheques had been forged* and in support of his submission relied on a passage in the text book "*The Identification of Handwriting and the Crossexamination of Experts*" by M.K. Mehta where the learned author states (at p. 23 of the text):
>
> > *It is common failing in a number of experts that they do not clearly state their reasons on which they base their opinions while submitting the reports to the courts*. The result is that the courts as well as the lawyers suffer from a distinct disadvantage. It is extremely difficult for them in such cases to test and verify the correctness of the opinions given. The mere opinion of the expert that a particular writing or signature is written or not written by the writer whose standard admitted writings or signatures were supplied to him for comparison, without any cogent reason, is not enough. The function of the expert is to give his honest opinion and place before the court all the data on which he bases his opinion, because it is the court who has to decide the case and accept or reject his opinion. In the absence of a clear and precise statement of his reasons, it is difficult for the court to appreciate the opinion of the expert. It is also not fair to the opposite side who is to cross-examine the expert on the correctness of his opinion. *Any opinion given without stating the reasons is valueless and is of no use as evidence*.
>
> > *We entirely agree with the passage cited. In a civil case and more so in a criminal case, the evidence of an expert on handwriting unsupported by cogent data showing the process by which he came to his conclusion is not worth*

A *the paper on which it is written and any reliance upon such evidence would, in our judgment, constitute a serious misdirection warranting interference by an appellate tribunal*. However, having said that, we are of the opinion that the principle contended for has no application to the facts of this case. (emphasis added)

B **[198]** The treatment of evidence of an expert who is less than candid was applied in the High Court decision of *Abdul Ghafur Mohd Ibrahim v. Pengarah Hospital Kepala Batas & Anor* [2010] 1 LNS 645; [2010] 6 MLJ 181 as follows at paras. 44 and 50 in relation SP2 (Dr Anil):

[44] ... However, on SP2's designation which he claimed he was a senior
C consultant neurosurgeon at the grade of U54 when he was working in Ipoh Hospital before he resigned in the year 2005, it is probable that SP2 may be mistaken of the year 2005 for 2006 when he said so and this court is prepared to give him the benefit of the doubt but *to claim that he was a senior consultant neurosurgeon with less than five years working experience as a specialist in direct conflict with the Ministry's Circular, D35, which categorically*
D *listed out the number of years of working experience for one to be designated as senior consultant neurosurgeon ie of more than ten years, such an assertion cannot be a mistake but an untruth which might not be detected if not of the Circular D35 and the evidence of SP8, the National Head of Neurosurgery. In addition, I do not think that it could be a mistake for SP2 to affirmatively said that he was holding grade U54 and resigned when he was at that grade when in actual fact, he was holding*
E *a lower grade at U48. After all SP2 had only resigned once from government service and it is improbable that he could make such a glaring mistake in the last grade that he held before he resigned. By being untruthful in his evidence as to his last designation in the government hospital and the grade he held before he resigned, I am inclined to agree with the defendants' submission that SP2 is not a reliable witness*
F *and as a matter prudence, the court must scrutinised the rest of his evidence with great care and suspicious*; see *Khoon Chye Hin v. Public Prosecutor* [1961] MLJ 105 (CA). ... *This court finds no reason that SP2 should lie to the court except to attempt to enhance his position that he was already holding the senior consultant neurosurgeon position at a high grade U54 when he resigned and when he applied to rejoin service, his application was even accepted but that the Ministry declined to*
G *accept his request for the post of Pediatric Neurosurgeon that he did not rejoin the service*. If that was his intention, I must say it back fires and it only goes to show how untruthful a witness he is.

...

[50] Having evaluated very carefully the evidence of Dr Anil and
H Dr Johari Siregar, I am satisfied that on a balance of probabilities, Dr Johari Siregar's views or opinions are to be preferred to the views or opinions of Dr Anil which comparatively are unsupported by material facts or medical literatures or wrong interpretation of medical literature. *This is coupled with the facts that this court also doubts Dr Anil's credibility when it has been proved that he was untruthful as discussed above*. Having so held, it must
I be said that it is trite that it is not the expert who determines whether a party is negligent or not but the ultimate decision is on the court. The expert's opinion in the medical science is relevant to assist the court to come to a just finding. (emphasis added)

[199] Based on trite principles, this court is inclined to accept the expert evidence of PW7 to that of DW3.

[200] During oral submission, learned counsel for the defendant raised an interesting point. He highlighted to this court that the closing price for the HPI shares prior to the announcement was RM3.93 and the closing price for the same share after the announcement was RM4.18. The difference in the two prices was a mere 6.36% increase after the announcement.

[201] Learned counsel for the defendant then referred to the daily movements of the price of HPI shares from March 2011 to June 2011 where there were days when the changes in the price was more than 6.36%.

[202] Based on the aforesaid, learned counsel for the defendant submitted that the plaintiff's expert witness, PW7 omitted to take the aforesaid into consideration. He further contended that the fact that there was no drastic change in the prices before and after the announcement in comparison to the fluctuation in prices of the HPI shares in the period from March 2011 to June 2011, means that the inside information was not 'material' as defined in s. 185 of the CMSA. This is because the inside information on becoming generally available from the date of the announcement, did not have any significant impact on the price of the HPI shares.

[203] Learned counsel drew to the attention of this court that in all previous decided and reported cases for insider trading, the percentage of change to the prices of the shares prior to and post announcement were significantly higher, exceeding 25%.

[204] With respect, I am unable to agree.

[205] The contention by learned counsel for the defendant is premised on his interpretation of the words 'on becoming generally available' in s. 185 to mean the actual date when the information becomes generally available – in this case, the date of the announcement. This, however, is not how I construe s. 185.

[206] To my mind, the words 'on becoming generally available' in s. 185 do not refer to the time when the information actually 'becoming generally available' but instead refer to the court positing the effect of the information 'on becoming generally available' at the time the information was disclosed or communicated. This explains why the section refers to a determination as to whether such information on becoming generally available 'would or would tend to have' a material effect on the price or value of securities. In other words, the court is required to posit based on the information 'on becoming generally available' as opposed to the court looking at any actual impacted price or value of the shares or actual influence of reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities or enter into an agreement with a view to acquire or dispose of such securities.

[207] Accordingly, as long as this court is satisfied that at the time the inside information was communicated to the defendant and in positing the effect of such information on becoming generally available at the time the inside information was communicated, if such information would or would tend to influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities, this would suffice to constitute 'material' information.

[208] Thus, while the difference between the price of the shares immediately prior to and immediately post the announcement is a fact that may be looked at by the court as support of its conclusion that the information is material, this is not and in fact cannot in law to be treated as the legal test to determine 'materiality' of the information. If this were so, it will be very easy to avoid a claim for insider trading for the insider could trade on the inside information, sell and make a gain from the same and then take steps to make the information to be generally available before the announcement. This will result in the announcement having minimal impact on the price of the impugned shares, thereby dispelling any 'materiality' to the information.

Defendant Traded HPI Shares Whilst In Possession Of The Inside Information

[209] It is an agreed fact that the defendant acquired HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011.

[210] The defendant was in possession of inside information from his communications with PW2 on 14 March 2011, 15 March 2011, 16 March 2011, 9 June 2011, 10 June 2011 and 12 June 2011 prior to the acquisition of HPI shares.

[211] Therefore, the defendant traded in HPI shares whilst in possession of inside information.

HPI Shares Are "Securities"

[212] Section 2 of the CMSA provides that "securities" mean:

(i) debentures, stocks or bonds issued or proposed to be issued by any Government;

(ii) shares in or debentures of, a body corporate or an unincorporated body; or

(iii) units in a unit trust scheme or prescribed investments, and includes any right, option, or interest in respect thereof.

[213] HPI is a company incorporated in Malaysia. Therefore, HPI shares are clearly shares in a body corporate under (ii), which fall within the definition of "securities".

Reliefs Sought By The Plaintiff

[214] Thus, based on the above, it is the judgment of this court that the plaintiff has satisfactorily established on the balance of probabilities all the necessary ingredients against the defendant for insider trading.

[215] What is left now is for this court to consider the reliefs to be granted.

Declaratory Relief

[216] In the instant case, the defendant has contravened s. 188(2)(a) of the CMSA in that:

(i) the defendant possessed the inside information which was not generally available and which, on becoming generally available, a reasonable person would expect it to have a material effect on the price or value of HPI shares;

(ii) the defendant knew or ought reasonably to have known that the inside information was not generally available;

(iii) prior to the inside information becoming generally available on 15 June 2011, the defendant, while in possession of the inside information, had acquired HPI shares on 16 March 2011, 17 March 2011 and 13 June 2011.

[217] The defendant is therefore an "insider" within the meaning of s. 188(1) of the CMSA at the time of acquisition of the HPI shares, and the defendant has contravened s. 188(2)(a) of the CMSA.

[218] Hence, it is my judgment that the plaintiff is accordingly entitled to the declaration in para. 50(a) of the statement of claim.

Sum Of RM2,363,122.50

[219] Section 201(5)(a) of the CMSA states as follows:

> *Where an insider acquired or agreed to acquire*, or procured another person to acquire or agree to acquire, *securities, in contravention of subsection 188(2)*, and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, *the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention, recover an amount equal to three times the amount being the difference between the price at which the securities were acquired or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available.* (emphasis added)

[220] PW6 has given evidence that it is in the public interest for the plaintiff to commence the suit against the defendant, as the securities laws of Malaysia must be complied with in order to preserve the integrity of the capital market and maintain investor's confidence. This was not challenged in cross-examination.

[221] PW6 testified that the difference between the price at which the securities were acquired by the defendant, and the price at which they would have been likely to have been acquired at the time of the acquisition, if the information had been generally available, as stipulated in s. 201(5) of the CMSA is RM787,707.50 ("theoretical gain"). The price at HPI shares would have been likely to have been acquired at the time of the acquisition, if the information had been generally available is based on the share price of RM4.18 per HPI share on 16 June 2011. The use of RM4.18 per HPI share by reference to the closing price on 16 June 2011 was not challenged by the defendant's counsel.

[222] During the trial, the defendant's counsel challenged the 'cost of acquisition' set out in para. 44 of the statement of claim on the ground that the same did not include brokerage.

[223] That challenge is misconceived. Section 201(5)(a) of the CMSA is clear. It references "the price at which the securities were acquired by the defendant", not "the cost at which the securities were acquired by the defendant". Therefore, brokerage does not form part of the computation envisaged in s. 201(5)(a) of the CMSA.

[224] The price at which the securities were acquired by the defendant is RM2.95836 on 16 March 2011 based on contract note dated 16 March 2011, RM3.18960 on 17 March 2011 based on contract note dated 17 March 2011, and RM3.75495 on 13 June 2011 based on contract note dated 16 June 2011.

[225] Based on the price set out above, PW6 testified that the theoretical gain is calculated as follows:

Date of Transaction	Shares (units)	Cost of Acquisition (excluding brokerage) (RM)	Price @ RM4.18 per share (RM)	Theoretical Gain (RM)
16.3.2011	335,000	991,050.60	1,400,300.00	409,249.40
17.3.2011	189,000	602,834.40	790,020.00	187,185.60
13 June 2011	450,000	1,689,727.50	1,881,000.00	191,272.50
Total	974,000	3,283,612.50	4,071,320.00	787,707.50

[226] Therefore, the plaintiff is entitled to claim for the sum of RM2,363,122.50 claimed in para. 50(b) of the statement of claim, being three times the theoretical gain of RM787,707.50.

[227] In *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827 (High Court) at para. 200(b), the factor of three was also applied to the gain.

Civil Penalty Of RM1,000,000

[228] Section 201(5)(b) of the CMSA states as follows:

> *Where an insider acquired or agreed to acquire securities in contravention of subsection 188(2)*, and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider or any other person involved in the contravention has been charged with an offence in respect of the contravention or whether or not the contravention has been proved in a prosecution, *the Commission may, if it considers that it is in the public interest to do so, by civil action against the insider or any other person involved in the contravention, claim civil penalty in such amount as the court considers appropriate, having regard to the seriousness of the contravention, being an amount not more than one million ringgit*. (emphasis added)

[229] The plaintiff submitted that a maximum civil penalty of RM1,000,000 should be imposed for the following reasons:

(i) insider trading is a serious offence, as the defendant has profited from the same at the expense of other traders who traded in HPI shares;

(ii) the defendant is a businessperson who has vast experience in commercial affairs. He should be well aware that insider trading is a market misconduct;

(iii) PW6 has given evidence that it is in the public interest for the plaintiff to commence the suit against the defendant, as the securities laws of Malaysia must be complied with in order to preserve the integrity of the capital market and maintain investor's confidence;

(iv) in *Suruhanjaya Sekuriti Malaysia v. Chan Soon Huat* [2017] 1 LNS 2175; [2018] 9 MLJ 782, the High Court held as follows [p. 145]:

> [181] As for civil penalty against the defendant, the purpose of pecuniary reliefs in insider trading cases was extensively discussed in *Australian Securities and Investments Commission v Hochtief Aktiengesellschaft* [2016] FCA 1489. The court held as follows:
>
> > It should also be noted in this context that, when sentencing offenders for the criminal offence of insider trading, *sentencing judges and courts of criminal appeal have consistently emphasised the importance of general deterrence as a sentencing consideration. That is not only because*

A *insider trading is difficult to detect and investigate, but also because there is a need to protect the integrity and efficacy of the market*: *R v. Fysh (No 4)* (2012) 92 ACSR 116; [2012] NSWSC 1587 at [11], [12]; *R v. Rivkin* (2003) 198 ALR 400; 45 ACSR 366; 21 ACLC 1092; [2003] NSWSC 447 at [44] (*R v. Rivkin* (2003)); Doff at [56]. *There is no reason to doubt that this reasoning applies equally to the fixing a penalty for a civil contravention of the insider trading provisions.* (emphasis added)

B

(v) in this case, the defendant had used the inside information with wilful abandon by acquiring 335,000 HPI shares (12.88% of the HPI shares exchanged for that day) on 16 March 2011; a further 189,000 HPI shares the next day on 17 March 2011 and 450,000 HPI shares on 13 June 2011. His use of the inside information impacted the market materially, as the closing price of HPI shares had increased from RM2.73 per share to RM3.10 per share between 14 March 2011 to 16 March 2011 and RM3.80 per share to RM3.93 per share between 12 June 2011 and 13 June 2011.

C

D

[230] However, having allowed the plaintiff's claim of RM2,363,122.50, being three times the theoretical gain of RM787,707.50, I do not think that this is an appropriate case to further impose a maximum civil penalty against the defendant. This is also not a case where the defendant has manipulated the market.

E

[231] When I asked learned counsel for the plaintiff for the rationale for imposing the penalty, she drew my attention to s. 201(7) of the CMSA which states:

F

(7) An amount recovered or obtained by the Commission in an action pursuant to subsection (5) or (6), respectively, shall be applied:

(a) Firstly, to reimburse the Commission for all costs of investigation and proceedings in respect of the contravention; and

(b) Secondly:

G

(i) Where it relates to subsection (5), to compensate the sellers who disposed of securities of the same class on the stock market of the stock exchange when information was not generally available between the time when the first contravention of subsection 188(2) occurred and the time when the information became generally available; and

H

(ii) ...

[232] However, there is no evidence adduced before this court to show that the sum of RM2,363,122.50 that is awarded under s. 201(5) is insufficient to meet the plaintiff's costs of investigation and the compensation stipulated in s. 201(7) such that this court should impose the maximum penalty of RM1,000,000 as prayed.

I

[233] In the premises, this court is minded to impose a civil penalty of RM250,000 against the defendant.

Order Removing/Barring The Defendant From Being A Director And/Or Being Involved In The Management Of Public Listed Companies

[234] Section 360(1)(a)(L) of the CMSA states as follows:

> (1) Where:
>
> (a) on an application by the Commission, it appears to the court that-
>
> (i) there is reasonable likelihood that any person will contravene a relevant requirement;
>
> (ii) *any person has contravened a relevant requirement*; or
>
> (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,
>
> whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;
>
> ...
>
> *the court may,* without prejudice to any order it would be entitled to make otherwise than pursuant to this section, *make one or more of the following orders*:
>
> (L) in a case where the person is a chief executive or director, *an order removing him from office or that he be barred from becoming a chief executive, director or be involved in the management directly or indirectly, of any other public company for such period of time as may be determined by the court*; (emphasis added)

[235] The plaintiff has prayed for a period of five years or for such period as may be determined by this court.

[236] The plaintiff is of the view that a period of five years is reasonable, as can be seen from the following cases:

(i) in *Suruhanjaya Sekuriti Malaysia v. Sreesanthan Eliathamby* [2021] 7 CLJ 913; [2021] 11 MLJ 827 (High Court) at para. 200(d) (p. 95), the defendant was barred from becoming a director for ten years;

(ii) in *Suruhanjaya Sekuriti Malaysia v. Yap Wee Hin* [2022] 1 LNS 1879; [2022] MLJU 1915 (High Court) at paras. 18 and 56, the defendant was barred from becoming a director for five years;

(iii) in *Suruhanjaya Sekuriti Malaysia v. Ng Back Heang* (WA-22NCC-162-04-2020) (2022) (High Court), the defendant was barred from becoming a director for five years.

[237] Accordingly, this court orders that the defendant be removed and/or barred from being a director and/or being involved in the management of public listed companies for a period of five years from the date of this judgment.

Order Barring The Defendant From Trading In Securities For Five Years

[238] Section 360(1)(a)(B) of the CMSA states as follows:

> (1) Where:
>
> (b) on an application by the Commission, it appears to the court that-
>
> (i) there is reasonable likelihood that any person will contravene a relevant requirement;
>
> (ii) *any person has contravened a relevant requirement*; or
>
> (iii) any person has contravened a relevant requirement and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention, including making restitution to any other person aggrieved by such contravention,
>
> whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution;
>
> ...
>
> *the court may*, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, *make one or more of the following orders*:
>
> ...
>
> (B) *an order restraining a person from dealing in securities or dealing in derivatives in respect of any class of securities or derivatives mentioned in the order*; (emphasis added)

[239] The plaintiff has prayed for a period of five years or for such period as may be determined by this court. The plaintiff submitted that a period of five years is reasonable for the same reasons set out above.

[240] This court therefore orders that the defendant be barred from trading in securities for five years from the date of this judgment.

Conclusion

[241] In the premises, this court grants the following reliefs against the defendant:

(i) a declaration that the defendant had breached s. 188(2)(a) of the CMSA;

(ii) the defendant to pay sum of RM2,363,122.50 to the plaintiff;

(iii) the defendant to pay a civil penalty of RM250,000 to the plaintiff;

(iv) interest at the rate of 5% per annum on the judgment sums in (ii) and (iii) above from the date of judgment until full and final realisation thereof;

(v) an order that the defendant be barred from being a chief executive or director and from being involved in the management, directly or indirectly, of any other public listed company in Malaysia for a period of five years from the date of judgment pursuant to s. 360(1)(a)(L) of the CMSA 2007;

(vi) an order that the defendant be restrained from trading in any securities on Bursa Malaysia for a period of five years from the date of judgment pursuant to s. 360(1)(a)(B) of the CMSA 2007; and

(vii) costs fixed at RM100,000 subject to payment of allocatur.